

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re FIRSTENERGY CORP. SECURITIES	)	No. 2:20-cv-03785-ALM-KAJ
LITIGATION	)	
	)	<u>CLASS ACTION</u>
	)	
This Document Relates To:	)	Judge Algenon L. Marbley
	)	Magistrate Judge Kimberly A. Jolson
ALL ACTIONS.	)	
	)	

STIPULATION CONCERNING EXPERT DISCOVERY

This Stipulation Concerning Expert Discovery (“Stipulation”) is entered into by Lead Plaintiff Los Angeles County Employees Retirement Association, together with Plaintiffs Amalgamated Bank,<sup>1</sup> City of Irving Supplemental Benefit Plan, and Wisconsin Laborers’ Pension Fund, and Defendants<sup>2</sup> (collectively, the “Parties”), by and through undersigned counsel. The Parties agree that the following provisions of this Stipulation shall govern reports, disclosures, and discovery with respect to testifying expert witnesses disclosed pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure (each a “Testifying Expert”) in the above-captioned action (the “Action”), notwithstanding any other potentially applicable law, statute, regulation, or rule:

1. The Parties agree to disclose or produce in discovery only all final written report(s) of each Testifying Expert pursuant to Rule 26(a)(2)(B). Each final written report shall state the information required by Rule 26(a)(2)(B).

2. Neither the Testifying Expert nor the Parties shall be required to disclose, produce, or log in discovery or at trial any of the following documents or information, unless relied upon by the Testifying Expert:

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<sup>1</sup> “Amalgamated Bank” refers to Plaintiff Amalgamated Bank, as Trustee for the LongView LargeCap 500 Index Fund, LongView Quantitative LargeCap Fund, LongView Broad Market 3000 Index Fund, LongView LargeCap 500 Index Fund VEBA, LV LargeCap 1000 Value Index Fund, LongView Quantitative MidCap Fund, LongView Quant LargeCap Equity VEBA Fund and LongView Core Plus Fixed Income Fund.

<sup>2</sup> “Defendants” refers to FirstEnergy Corp., Charles E. Jones, James F. Pearson, Steven E. Strah, K. Jon Taylor, Michael Dowling, Dennis M. Chack, Ty R. Pine, Robert Reffner, Leila L. Vespoli, John Judge, Donald R. Schneider, Jason J. Lisowski, George M. Smart, Paul T. Addison, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O’Neil III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Jerry Sue Thornton, Leslie Turner, Barclays Capital Inc., BofA Securities, Inc., Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, Mizuho Securities USA LLC, PNC Capital Markets LLC, RBC Capital Markets, LLC, Santander Investment Securities Inc., Scotia Capital (USA) Inc., SMBC Nikko Securities America, Inc., CIBC World Markets Corp., KeyBanc Capital Markets Inc., TD Securities (USA) LLC, U.S. Bancorp Investments, Inc. and MUFG Securities Americas Inc.

(a) drafts of any report, affidavit, declaration, written testimony, exhibit, demonstrative or disclosure prepared by or at the direction of the Testifying Expert, counsel, or other agent of the party proffering the Testifying Expert, or others working under the supervision of or on behalf of the Testifying Expert, in connection with the Testifying Expert's work in the Action or any other matter, regardless of the form in which such draft is recorded;

(b) preliminary or intermediate calculations, computations, programs, data collections, or data runs prepared by or at the direction of the Testifying Expert, counsel or other agent of the party proffering the Testifying Expert, or others working under the supervision of or on behalf of the Testifying Expert, in connection with the Testifying Expert's work in the Action or any other matter, regardless of the form in which such preliminary or intermediate material is recorded;

(c) notes created or prepared by or at the direction of the Testifying Expert, counsel, or other agent of the party proffering the Testifying Expert, or others working under the supervision of or on behalf of the Testifying Expert, in connection with the Testifying Expert's work in the Action or any other matter, regardless of the form in which such notes are recorded; or

(d) documents or information constituting oral or written communications between or among the Testifying Expert, any other Testifying Experts, others working under the supervision of or on behalf of any Testifying Expert, or counsel or other agent of the party proffering (or parties relying on) the Testifying Expert, in connection with the Testifying Expert's work on the Action or any other matter, regardless of the form of such communications.

3. Within five business days of providing a final written report, the Testifying Expert shall substantially complete production of the facts or data relied upon by the Testifying Expert in

forming their opinion(s) (via email, external hard drive, or FTP site). Such facts or data shall include data, statistical analyses, or other information (including any calculation or exhibit) upon which a Testifying Expert relies for any of their opinion(s) in this matter (including computer programs, excel files, data inputs, etc.). Absent agreement of the Parties, such data shall be provided, as applicable, in native computer format, with formulas included as appropriate, or in machine readable format, including any data that has been cleaned, reformatted, or modified in any way from the form in which it was provided to the Testifying Expert. Within ten business days of providing a final written report, the Testifying Expert shall also substantially complete production of any academic literature, articles, media reports, analyst reports, or other materials cited or relied upon by the Testifying Expert, irrespective of whether such materials are publicly available. Documents that have previously been produced during discovery and were relied upon by the Testifying Expert in forming their opinion(s) need not be produced if they are identified by Bates number. The transcripts of depositions taken during discovery in this case, and the related exhibits, also need not be produced, but must be identified if relied upon by the Testifying Expert in forming their opinion(s). The Testifying Expert shall also disclose or produce a document identifying their hourly rate for work related to their report and testimony in the case, as well as the hourly rate(s) of consultants and assistants for work related to the report and/or relied upon by the Testifying Expert. Nothing in this paragraph or Stipulation shall be construed to require the disclosure or production of any documents or information described in ¶ 2, which are expressly excluded from disclosure or production and which the parties agree they shall not seek or request or otherwise attempt to discover.

4. Nothing herein shall be construed to prevent or limit in any way the examination of the Testifying Expert at deposition or trial. The Testifying Expert may still be fully questioned

relating to their opinion(s) (including alternative theories, methods, variables, facts, data, or assumptions that the Testifying Expert may or may not have considered in forming their opinion(s) or in preparing their report). Thus, notwithstanding anything to the contrary herein, a Testifying Expert may be presented at deposition or trial with documents, testimony, or other materials not contained in their expert report and questioned about whether the Testifying Expert saw or considered such documents, testimony, or other materials; the reasons why the Testifying Expert did or did not consider or rely on such documents, testimony, or other materials in forming their opinion(s); and whether such documents, testimony, or other materials cause the Testifying Expert to alter their opinion(s) in any respect.

5. No subpoenas (for depositions or documents) need be served on any Testifying Expert from whom a report is provided. Instead, the party proffering such expert will be responsible for: (a) disclosing and producing all documents and information required to be disclosed and produced by this Stipulation; and (b) making such expert available for deposition at a time and location mutually agreed to by the Parties and consistent with the Court's scheduling order (ECF No. 255) and this Stipulation. To the extent a party seeks documents beyond those identified for production in this Stipulation, the party must serve a subpoena for such documents. Nothing in this Stipulation shall be construed either to limit the scope of documents that may be sought (except that no party shall seek those documents or information described in ¶ 2) or to waive a party's objection to any such subpoena.

6. Absent agreement of the Parties or court order, the deposition of a Testifying Expert will take place in a location consistent with one set forth in Rule 45(c)(1)(A). Unless otherwise agreed upon by the Parties or ordered by the Court, the party retaining the Testifying Expert will provide a location (city and state) for the deposition and identify that geographic location in

connection with the Parties' discussion of the deposition date. Once the Parties agree on a deposition date and corresponding geographic location, the party retaining the Testifying Expert will provide a specific location for the deposition no later than 14 days before the deposition date, absent agreement of the Parties. Absent agreement of the Parties or court order, the deposition of a Testifying Expert must allow for any counsel and party representatives to attend by remote means.

7. To the extent needed, the Parties agree to supplement this Stipulation to address matters relating to noticing and coordinating the depositions of Testifying Experts.

8. Absent agreement of the Parties or court order, each Testifying Expert shall be deposed only once (unless the Testifying Expert submits a report at both the class certification stage and at the merits stage, in which case the Testifying Expert may be deposed once at the class certification stage and once at the merits stage).

9. The Parties agree that Rule 26(b)(4)(E) will not be applied in this case. For the sake of clarity, the Party retaining the expert witness shall pay the expert witness fee for attendance at the expert's deposition.

10. Nothing herein shall be deemed to limit or waive any party's rights to object for any reason to the admission of any opposing party's Testifying Expert's testimony, opinions, final written report(s), or qualifications to serve as a Testifying Expert.

11. This Stipulation shall become effective upon its entry by the Court and may be amended by written agreement of the Parties or upon order of the Court for good cause shown.

IT IS SO STIPULATED.

Date: July 7, 2022

/s/ Kimberly A. Jolson  
KIMBERLY A. JOLSON  
UNITED STATES MAGISTRATE JUDGE

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